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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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10 TONY CAMPBELL,

No. CIV S-05-0503-MCE-CMK-P

11 Plaintiff,

12 vs.

FINDINGS AND RECOMMENDATIONS

13 S. SCHMIERER, et al.,

14 Defendants.  
15 \_\_\_\_\_/

16 Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant  
17 to 42 U.S.C. § 1983. On November 29, 2005, the court ordered plaintiff to show cause why this  
18 action should not be dismissed as a sanction pursuant to Federal Rule of Civil Procedure 11 for  
19 failure to truthfully declare the number of lawsuits that he had filed prior to filing the instant  
20 action. Plaintiff was directed to describe the outcome of each previous lawsuit.

21 On December 16, 2005, plaintiff filed a response to the order to show cause.  
22 Plaintiff states that he was not untruthful. Rather, he states that he suffers from mental illness, is  
23 on medication, and is undergoing psychiatric treatment. He says this disability is the reason why  
24 he stated on his in forma pauperis application that he had filed only one prior suit. He now states  
25 that he filed 30 prior suits and that all of them are still pending.

26 The court is not convinced that plaintiff's statements concerning the number of

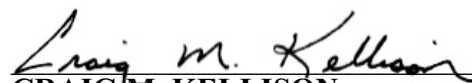
1 prior lawsuits were inadvertent or the result of confusion. First, there is a difference between  
2 affirmatively asserting, as plaintiff did on his in forma pauperis application, that he had filed one  
3 prior lawsuit, and stating, as he does now, that he cannot remember the number of prior lawsuits  
4 due to mental confusion. Second, the court takes judicial notice of plaintiff's responses to  
5 similar orders to show cause issued in two other actions currently pending before this court. In  
6 particular, in his response filed on November 10, 2005, in case no. CIV S-05-0294-DFL-CMK-  
7 P, plaintiff states that he has filed 69 suits in the Eastern District of California and that 39 of  
8 them are still pending. In his response filed on December 15, 2005, in case no. CIV S-05-2243-  
9 MCE-CMK-P, plaintiff states that he has filed 45 prior suits and that all of them are still  
10 pending.

11           Given this record, it is clear that plaintiff has violated Rule 11 by being untruthful  
12 in one or more of the responses he has given to the court. The sanction of dismissal is, therefore,  
13 appropriate. See Fed. R. Civ. P. 11(c)(1)(B).

14           Based on the foregoing, the undersigned recommends that this action be  
15 dismissed with prejudice.

16           These findings and recommendations are submitted to the United States District  
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days  
18 after being served with these findings and recommendations, any party may file written  
19 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
20 Findings and Recommendations." Failure to file objections within the specified time may waive  
21 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 DATED: February 6, 2006.

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25 **CRAIG M. KELLISON**  
26 UNITED STATES MAGISTRATE JUDGE